

(2) Whether participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured depository institution constitutes a threat to the safety or soundness of the insured depository institution or the interests of its depositors, or threatens to impair public confidence in the insured depository institution;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured depository institution;

(6) The ability of the management at the insured depository institution to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured depository institution;

(8) Applicable fidelity bond coverage for the applicant; and

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether a person, who was convicted of a crime or who agreed to enter a pretrial diversion or similar program, was guilty of that crime shall not be at issue in a proceeding under this subpart.

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62101, Nov. 16, 1999]

§ 308.158 Filing papers and effective date.

(a) *Filing with the regional office.* Applications pursuant to section 19 shall be filed by in the appropriate regional office. Unless a waiver has been granted pursuant to paragraph (c) of this section, only an insured depository institution may file an application. Persons meeting the de minimis criteria set forth in the FDIC's Statement of Policy on Section 19 of the FDIA (63 FR 66177 (1998)) need not file an application.

(b) *Effective date.* An application pursuant to section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application pursuant to section 19. The removal and/or prohibition pursuant to section 19 shall continue

until the individual has been reinstated by the Board of Directors or its designee for good cause shown.

(c) *Waiver applications.* If an institution does not file an application regarding an individual, the individual may file a request for a waiver of the institution filing requirement for section 19 of the FDIA. Such a waiver application shall be filed with the appropriate regional office and shall set forth substantial good cause why the application should be granted. The Director of the Division of Supervision and Consumer Protection (DSC) and, where confirmed in writing by the director, a deputy director or an associate director may grant or deny applications requesting waivers of the institution filing requirement. The authority delegated under this section shall be exercised only upon the concurrent certification of the General Counsel or his designee that the action to be taken is not inconsistent with section 19 of the FDIA.

[64 FR 62101, Nov. 16, 1999]

§ 308.159 Denial of applications.

A denial of an application pursuant to section 19 shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within 60 days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.157 of this subpart.

§ 308.160 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed pursuant to § 308.159. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the person proposing to become or continue as an